

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 326X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
HENRY COUNTY, IND.

Decided: September 30, 2013

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 0.88 miles of non-contiguous rail line segments in New Castle, in Henry County, Ind.,¹ as follows: (1) approximately 0.12 miles of rail line extending between milepost R 0.00 (near Broad Street) and milepost R 0.1205 (near the intersection of S. 16th St. and Indiana Ave.); and (2) approximately 0.76 miles of rail line extending between milepost R 1.1629 (near the intersection of Cherrywood Avenue and M Avenue) and milepost R 1.92 (near the intersection of Cherrywood Avenue and Riley Road).² Notice of the exemption was served and published in the Federal Register on July 31, 2013 (78 Fed. Reg. 46,412). The exemption was scheduled to become effective on August 30, 2013.

By decision served on August 29, 2013, the Board imposed public use and trail use conditions on NSR's abandonment exemption and two environmental conditions recommended by the Board's Office of Environmental Analysis (OEA). The environmental conditions require NSR to: (1) consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning any salvage activities that could disturb or destroy any geodetic station markers in order to plan for the possible relocation of the geodetic station markers by NGS; and (2) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. The second environmental condition also requires NSR to report to OEA regarding any consultations with the Division of Historic Preservation and

¹ C&NC Railroad Corporation (CNUR) joined in filing this notice of exemption to obtain Board authorization to discontinue service over the same rail line segments. C&NC R.R.—Discontinuance of Service Exemption—in Henry Cnty., Ind., AB 1093X.

² According to NSR, the line segments are part of the same rail line but are separated by an approximately 1.04-mile middle line segment, which will not be abandoned and which will continue to connect with other rail lines.

Archaeology of the Indiana Department of Natural Resources (State Historic Preservation Office or SHPO) and the public, and prohibits NSR from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

In a Supplemental Final Environmental Assessment dated September 10, 2013, OEA states that on September 5, 2013, it received a copy of a letter from the SHPO dated July 2, 2012, addressed to NSR.³ OEA states that the SHPO indicates in its comments (1) that there are no known historic buildings, structures, districts, or objects listed in or eligible for listing in the National Register within the project area, and (2) that there are no known archaeological resources eligible for inclusion in the National Register that would be affected by the proposed abandonment. OEA states that it has reviewed the available information and concurs with the SHPO's comments. OEA states that it has determined that the proposed abandonment would not adversely affect historic properties or archaeological resources listed in or eligible for inclusion in the National Register. Accordingly, OEA recommends that the Section 106 condition be removed.

Further, OEA states that the SHPO requests in its comments that, should any archaeological artifacts or human remains be discovered during abandonment activities, operations should cease and NSR should immediately notify the SHPO. Accordingly, OEA recommends that the following additional condition be imposed: in the event that any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices are discovered, NSR shall immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, NSR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Consistent with OEA's recommendations: (1) the previously imposed Section 106 historic preservation condition will be removed; (2) the previously imposed NGS condition will remain unchanged; and (3) the recommended additional condition to address concerns regarding unanticipated discoveries during salvage activities will be imposed.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

³ OEA states that it has no record of receiving the July 2 letter and that NSR was similarly unaware of the letter. OEA states that NSR indicates it is possible that the letter was never delivered to its intended recipients.

2. Upon reconsideration, the Section 106 historic preservation condition imposed in the August 29, 2013 decision and notice is removed.

3. In addition to the NGS condition imposed in the August 29, 2013 decision and notice, NSR's abandonment exemption is subject to the new environmental condition as follows: in the event that any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices are discovered, NSR shall immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, NSR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.